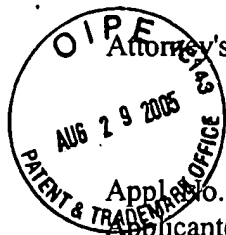


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Attorney's Docket No. 048057/275988

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.: 10/060,697
Applicant(s): Petersen *et al.*
Filed: January 30, 2002
Art Unit: 1651
Examiner: Witz, Jean C.
Title: BONE GRAFT SUBSTITUTE COMPOSITION

Confirmation No.: 8553

Docket No.: 048057/275988
Customer No.: 00826

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR § 1.193

The following comments are offered in response to the Examiner's Answer mailed on June 28, 2005. Although Appellant has chosen to focus on a several key issues herein, this should not be construed as an abandonment of any arguments originally made in the Appeal Brief filed on April 11, 2005.

I. Comments on Examiner's Answer

First, Appellant reiterates that the teachings of O'Leary are manifestly inconsistent with the use of calcium sulfate hemihydrate, which is known in the art (as admitted by the Examiner) to result in a composition that hardens upon exposure to an aqueous liquid. The O'Leary reference is directed to a "flowable" composition and particularly states that the object of the O'Leary invention is to provide "a composition of liquid or pastelike consistency" and to apply "the composition" to a bone defect site to induce new bone growth (column 1, lines 36-43). The O'Leary disclosure also states that the bone powder composition described therein can be prepared beforehand and stored in a sterile condition for later use, and even stored within a syringe or other means for applying the composition (column 1, lines 63-67; column 4, lines 34-37)). Appellant respectfully submits that the Examiner has not adequately explained how one of ordinary skill in the art would be motivated to overlook this clear requirement in O'Leary by adding a substance known to cause hardening (i.e., negate flowability) of a composition.